



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2014-0715; FRL-9932-73-Region 9]

Approval and Promulgation of Implementation Plans; California;

San Joaquin Valley Unified Air Pollution Control District;

Employer Based Trip Reduction Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a regulation submitted for incorporation into the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). The regulation, Rule 9410 (Employer Based Trip Reduction), establishes requirements for employers in the San Joaquin Valley to implement programs encouraging employees to use ridesharing and alternative transportation methods to reduce air pollution. The effect of this action would be to make the requirements of Rule 9410 federally enforceable as part of the California SIP.

DATES: Written comments must be received on or before [**Insert date 30 days from date of publication**].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R09-OAR-2014-0715, by one of the following methods:

1. Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments.

2. E-mail: Jeffrey Buss at buss.jeffrey@epa.gov.

3. Mail: Jeffrey Buss, Air Planning Office (AIR-2), U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne,
San Francisco, California 94105.

4. Hand or Courier Delivery: Jeffrey Buss, Air Planning
Section (AIR-2), U.S. Environmental Protection Agency,
Region IX, 75 Hawthorne, San Francisco, California 94105.

Such deliveries are only accepted during the Regional
Office's normal hours of operation. Special arrangements
should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R09-OAR-2014-0715. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through www.regulations.gov or e-mail that you consider to be CBI or otherwise protected from

disclosure. The www.regulations.gov website is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available for viewing only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available at either location (e.g.,

CBI). To inspect the docket materials in person, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947-4152, e-mail: buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background

The San Joaquin Valley (SJV)¹ is currently designated as nonattainment for several of the national ambient air quality standards (NAAQS) promulgated by EPA under the Clean Air Act (CAA) for ozone and fine particulate matter (PM_{2.5}).

Specifically, the SJV area is designated and classified as

¹ The SJV area encompasses over 23,000 square miles and includes all or part of eight counties in California's central valley: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and Kern.

extreme nonattainment for the 1-hour, 1997 8-hour, and 2008 8-hour ozone NAAQS; designated and classified as serious nonattainment for the 1997 PM_{2.5} NAAQS; and designated and classified as moderate nonattainment for the 2006 and 2012 PM_{2.5} NAAQS. See 40 CFR 81.305.

Section 172(c)(1) of the Act requires that all nonattainment areas implement, as expeditiously as practicable, reasonably available control measures (RACM) including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT). Additionally, Section 189(a)(1)(C) of the Act requires that moderate PM_{2.5} nonattainment areas implement RACM (including RACT) and section 189(b)(1)(B) requires that serious PM_{2.5} nonattainment areas implement best available control measures (BACM), including best available control technology (BACT). The SJV area is subject to all of these control requirements as a result of its designations and classifications for the ozone and PM_{2.5} NAAQS. For an ozone nonattainment area classified as severe or above, section 182(d)(1)(B) also provides that a state may, in its discretion, submit a SIP revision requiring employers to implement programs to reduce work-related vehicle trips and miles travelled by employees.

Despite numerous air pollution control measures and programs that the SJVUAPCD has implemented over the years to reduce air pollution, the SJV continues to experience some of the worst air quality in the nation. *See, e.g.*, 80 FR 1482 (January 12, 2015) (discussing recent PM_{2.5} air quality trends in SJV). As a result, the District has increasingly relied upon nontraditional emission reduction strategies to reduce air pollution in the SJV. *See, e.g.*, 79 FR 28650 (May 19, 2014) (proposed action on SJV Rule 9610 concerning incentive programs) and 80 FR 19020 (April 9, 2015) (final action on SJV Rule 9610). EPA supports state efforts to implement nontraditional and innovative strategies for reducing air pollutant emissions, including commuter programs to reduce the frequency that employees drive alone to work. *See, e.g.*, U.S. EPA, Transportation and Climate Division, Office of Transportation and Air Quality, "Commuter Programs: Quantifying and Using Their Emission Benefits in SIPs and Conformity" (February 2014).

II. The State Submittal

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by CARB.

Table 1 - Submitted Rule

Local Agency	Rule #	Rule Title	Adopted	Submitted
SJVUAPCD	9410	Employer Based Trip Reduction	12/17/09	05/17/10

On November 17, 2010, the submittal for Rule 9410 was deemed by operation of law under CAA section 110(k)(1)(B) to meet the completeness criteria in 40 CFR Part 51 Appendix V. There are no previous versions of Rule 9410 in the SIP.

The Rule 9410 SIP submittal includes Rule 9410 (as adopted December 17, 2009), the District's "Final Staff Report: Rule 9410 (Employer Based Trip Reduction)" dated December 17, 2009 (Final Staff Report), public process documentation, and technical support materials. CARB and the District submitted this rule to satisfy a SIP-approved regulatory commitment in the PM_{2.5} plan for the SJV. See 76 FR 69896 at 69926 (November 9, 2011) (PM_{2.5} control measure commitments, codified at 40 CFR 52.220(c)(392)(A)(2)).

The California Health and Safety Code specifically authorizes the District to adopt rules and regulations to reduce vehicle trips and requirements for certain businesses employing at least 100 people to establish rideshare programs. See Final

Staff Report at 9 (citing California H&SC sections 40601(d) and 40612). Consistent with these authorities, Rule 9410 requires certain employers with at least 100 "eligible employees"² at a work site to establish programs to reduce employee commute-related vehicle travel, referred to in the rule as "employer trip reduction implementation plans" or "ETRIPs."³ According to the District, approximately 36% of employees in the SJV are employed at worksites with 100 or more employees. See Final Staff Report at B-6. Employers subject to the rule must, among other things, register with the SJVUAPCD, submit an ETRIP for each worksite to the District, and submit annual compliance reports to the District. See Rule 9410, sections 6.1, 6.3, and 6.5.

III. Evaluation of the State Submittal

A. SIP Procedural Requirements

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should

² "Eligible employees" do not include emergency health and safety employees, farm workers, field construction workers, on-call employees, part-time employees, seasonal employees, and volunteers, among others. See Rule 9410, sections 3.19 and 3.31.

³ Rule 9410 defines ETRIP as a "group of measures implemented by an employer, designed to provide transportation information, assistance, and/or incentives to employees" and intended to "reduce mobile source emissions by reducing the number of vehicle miles traveled to the worksite." Rule 9410, section 3.28.

include evidence that adequate public notice was given and an opportunity to request a public hearing was provided consistent with EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of this SIP revision. The District conducted public workshops, provided public comment periods, and held public hearings prior to the adoption of Rule 9410 on December 17, 2009. See SJVUAPCD Governing Board Resolution No. 09-12-19 (December 17, 2009). CARB provided the required public notice and opportunity for public comment prior to its public hearing on the plan. See CARB Executive Order S-10-001 (May 17, 2010).

The SIP submittal includes proof of publication for notices of the District and CARB public hearings, as evidence that all hearings were properly noticed. We therefore find that the submittal meets the procedural requirements of CAA sections 110(a) and 110(1).

B. Enforceability Requirements

Section 110(a)(2)(A) of the Act requires that each SIP "include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions

rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the Act]." EPA generally considers a requirement to be enforceable if it contains a clear statement as to applicability; specifies the standard that must be met; states compliance timeframes sufficient to meet the standard; specifies sufficient methods to determine compliance, including appropriate monitoring, record keeping and reporting provisions; and recognizes relevant enforcement consequences. See "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," September 23, 1987 ("1987 Potter Memo") and "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits," January 25, 1995 ("1995 PTE Policy") at 5, 6.

Rule 9410 adequately addresses these recommendations for enforceability. First, section 2.1 of the rule clearly states that the requirements of the rule "apply to each employer in the [SJV] Air Basin with at least 100 Eligible Employees at a worksite for at least 16 consecutive weeks during the employer's previous fiscal year" that is located: (1) within an incorporated city with a population of at least 10,000; (2) within an incorporated city with a population of less than 10,000, and more than 50 percent of their employees work at

least 2,040 hours per year; or (3) within the unincorporated area of a county, and more than 50 percent of their employees work at least 2,040 hours per year (section 2.1).

Second, sections 5.0 and 6.0 of the rule specify the requirements that must be met by employers subject to the rule - e.g., the requirements to implement an ETRIP for each worksite with 100 or more "eligible employees" (section 5.1); to include in each ETRIP measures from several dozen listed strategies by specified implementation deadlines (section 5.2); to submit to the District no later than July 1, 2010 or within 180 days after becoming subject to the rule a complete "employer registration form" containing specific types of information about the employer's business (section 6.1); and to verify and report commuter activity to the District on an annual basis (sections 6.4 and 6.5).

Third, sections 6.0 and 8.0 of the rule specify appropriate compliance timeframes, including deadlines for employer registration (section 6.1), submittal of the ETRIPs and related updates (section 6.3), and submittal of annual reports regarding commuter activity (section 6.5).

Finally, section 6.0 of the rule specifies sufficient methods to determine compliance, including requirements for employers to annually collect information on the modes of

transportation used for each eligible employee's commutes to and from work for each day of the "commute verification period"⁴ (section 6.4.1); requirements for employers to "keep records of steps taken to implement measures... included in the ETRIP on file for at least five years" and to make such records available to the District and EPA upon request (section 6.3.5); and requirements for employers to submit annual reports to the District containing detailed information about the results of their commute verifications, implemented ETRIP measures, and any updates to an ETRIP (section 6.5).

All of these requirements are enforceable against covered employers under state law (see Final Staff Report at A-13, citing California H&SC sections 42402-42403) and, upon approval into the California SIP, would also be enforceable under sections 113 and 304 of the CAA.

C. Section 110(1) of the Act

Section 110(1) of the CAA prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and RFP or any other applicable CAA requirement. The requirements and procedures in Rule 9410 are designed to reduce mobile source emissions in the

⁴ Section 3.11 of the rule generally defines "commute verification period" as "[a] period of at least one week, selected by the employer to represent a typical work week," or in certain cases a two-week pay period, that does not contain a federal, state, or local holiday.

SJV by requiring certain businesses to implement programs that encourage employees to reduce their vehicle trips and miles traveled to and from worksites. Rule 9410 does not revise any requirement in the applicable SIP. We propose to determine that our approval of Rule 9410 would comply with CAA section 110(1) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for attainment of the NAAQS and other CAA provisions are met.

D. Estimated Emission Reductions

SJVUAPCD estimates that the ETRIP program reduced NO_x, VOC and PM_{2.5} emissions by 0.6, 0.6 and 0.05 tons per day (tpd), respectively, in 2014 and will further reduce emissions of these pollutants by 0.3, 0.4 and 0.06 tpd, respectively, in 2023. See Final Staff Report at Appendix B, Table B-4. We find these emission reduction estimates technically sound and generally consistent with the planning assumptions in the District's 2008 PM_{2.5} Plan. See generally *id.* at Appendix B and 2008 PM_{2.5} Plan, Appendix B, tables B-1, B-2, and B-4.

We note that Rule 9610 requires each employer subject to the rule to submit, beginning March 31, 2015, an annual compliance report identifying the measures the employer implemented and the results of the annual commute verification surveys distributed to employees. See Rule 9410, section 6.5. We

recommend that the District periodically reassess the effectiveness of the ETRIP program and update its estimates of the associated emissions reductions based on these submitted reports and using the most recent EPA-approved version of the EMFAC model.⁵

IV. Proposed Action and Request for Public Comment

Under section 110(k)(3) of the CAA, EPA is proposing to fully approve the submitted rule as a revision to the California SIP. We will accept comments from the public on this proposal for the next 30 days.

V. Incorporation by Reference.

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SJVUAPCD rule described in Table 1 of this notice. The EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews

⁵ EMFAC is the motor vehicle emissions factor model that EPA has approved for use in California SIPs (78 FR 14533, March 6, 2013).

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on

tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 2015.

Jared Blumenfeld,
Regional Administrator,
Region IX.

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